IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4119 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GENERAL MANAGER (PROJECT)

Versus

SECREARY

Appearance:

1. Special Civil Application No. 4119 of 2002

MR RR MARSHALL for Petitioner No. 1-2

MR TR MISHRA for Respondent No. 1

MR KS ACHARYA for Respondent No. 2

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 17/04/2002

ORAL JUDGEMENT

Rule. Learned Counsel for the respondent waives service.

By this petition styled as a petition under Article 226 and 227 aof the Constitution of India, the petitioner Corporation ("ONGC" for short) has challenged the award of the Industrial Tribunal, Ahmedabad in Reference I.T.C No. 10/93, whereby 18 employees concerned have been ordered to be regularised in the service with effect from 1.4.1993 with consequential benefits and costs of Rs. 5,000/-.

2. The dispute referred by the Government of India, Ministry of Labour vide its order dated 29.4.1993 to the Industrial Tribunal for adjudication, reads as under:-

"Whether the action of the management of ONGC, Ahmedabad Project in engaging 18 contract labourers through various contractors for last 5 years on the work of perennial nature is justified? If not, to what relief these 18 workmen so employed are entitled to and from what date and what directions are necesesary in the matter?"

3. The Trade Union representing the workmen clearly stated in their statement of claim before the Tribunal that the contract system introduced by the ONGC was only a camouflage and a smoke-screen created by them to deprive the workmen of their legal rights and therefore, the Tribunal was required to tear the veil and go in depth to find out who is the real employer. The respondent also made an attempt at bringing the contractor on record, but the notices of the Tribunal could not be served despite attempts and substituted services. During the course of recording of evidence before the Tribunal, the petitioner did not take any step to either prove the existence of any contractor or of a contract under which the workmen were made to work. In the deposition before the Tribunal it was stated that the alleged contracts with the contractors were sham and bogus, while in reality, it was the ONGC whose manager used to entrust the work and mark presence of the employees.

4. As against the evidence of the workmen concerned about having worked under the ONGC since 1988, the ONGC failed to prove by essential documentary evidence that there were any contracts and such contracts were registered or ever verified by any officer. Even in reply to a specific query as regards the record of service under any particular contractor, the ONGC's witness gave an evasive reply to the effect that the record lying in the office had to be verified for the

answer. On the whole, by an overwhelming preponderance of evidence, the Tribunal arrived at the finding of fact that the workmen concerned were working under the ONGC since more than 10 - 12 years and that the contract under which they were alleged to have been working were bogus.

5. The learned Counsel Mr. Marshal appearing for the ONGC was partly right in emphasising that the service of the workmen concerned under ONGC was, for the latter part, under an interim order of the Tribunal. However, as the terms of reference itself suggested and as it was held to have been proved, the workmen concerned were actually working under the ONGC since five years preceding the making of the reference in 1993. Having regard to these findings of fact and also having regard to the financial implication of the prayers made, the Tribunal made an award granting the benefits of regularisation from the date of reference. The learned Counsel Mr. Marshal vehemently argued that the oral and documentary evidence placed before the Tribunal was not properly considered and appreciated in so far as the workmen concerned were, by their own admission, working under the contractors and no direct relationship of master and servant could be imposed upon the ONGC, particularly in view of the recent judgement of the Supreme Court in Steel Authority of India Ltd. Vs. National Water Front Workers & ors., reported in 2001 (6) Supreme Today 602. It must be noted that the findings of fact arrived at by the Tribunal could not be assailed as being perverse. As far as the impugned order to regularise the services of the workmen is concerned, it can hardly be called an order for absorption in view of the finding of fact that in reality the workmen were directly employed by the ONGC itself and the contracts were bogus. In that view of the matter, the observations of the apex Court as under in the aforesaid judgement would directly apply.

123. The upshot of the above discussion is outlined thus:-

(1) xxx xx
(2) xxxxxx xx
(3) xxxx xxx
(4) xxxx xxx
(5) On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the

industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularise the services of the contract labour in the concerned establishment subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder.

(6) If the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the concerned establishment has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications." (emphasis added).

Obviously, although the direction in paragraph (5) above is to be carried out in the light of paragraph (6), the paragraph (6) hereinabove applies in the case of genuine contract where prohibition notification under Section 10(1) of the CLRA Act in respect of the concerned establishment has been issued. In the facts of this

case, the aforesaid ratio supports the impugned award and can hardly be pressed into service to reverse it.

6. The learned Counsel Mr. Marshal then argued that there are recruitment rules and procedure prescribed for regular recruitment to respective posts in the establishment of ONGC and, the absorption as ordered by the Tribunal in the impugned award would violate the essential conditions contained in the rules. Such argument hardly lies in the mouth of an employer who insists upon violating the conditions and stipulations of its own service rules by employing workmen under the contracts which turn out to be bogus and camouflage and then sets up the defence of violation of rules. "Nemo ex Doio suo Proprio Reievetur aut Auxilum Capiat: Let no one be relieved or gained an advantage by his own fraud." is the gist of ancient legal wisdom which applies in the facts of this case. As emphasised by the learned Counsel, on the basis of material on record, most of the workmen had continuously and consistently worked on a particular job, while the name of the contractor was changing at different intervals. In such circumstances, it can hardly be argued that the workmen concerned were unfit for the job. It is in these facts that the Tribunal has, in the impugned award, reached to the conclusion that the workmen concerned appeared to have been actually recruited by the company itself and under the ruse of contractor, they were being exploited.

7. In these facts and for the reasons discussed hereinabove, no case is made out for interference with the impugned award and therefore, the petition is hereby dismissed. Rule is discharged with no order as to costs.

(D.H.Waghela, J.)

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